

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : No. 5731 ADOPTION  
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: :  
M.C. : ORPHANS' COURT DIVISION  
MINOR CHILD :  
: 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Order docketed April 11, 2003.

This Court heard testimony on April 7-8, 2003 on Lycoming County Children and Youth Services' (hereinafter "the Agency") Petition for Involuntary Termination of Parental Rights of Marcella C. (hereinafter "Mother") to the minor child M.C., who was born February 17, 1994 and is nine (9) years old. The natural Father's parental rights were terminated on December 7, 1999.

After completing testimony on April 8, 2003, the Court granted the Agency's petition and terminated Mother's parental rights. The Court found the Agency proved by clear and convincing evidence grounds for termination of parental rights pursuant to 23 Pa.C.S.A §2511(a)(1), (5), and (8). Mother filed a notice of appeal to the Court's Order. Mother raises two (2) issues on appeal: (1) the evidence was

insufficient to terminate her parental rights; and (2) termination was not in the best interest of M.C.

The Court believes that Mother's appeal is utterly devoid of merit. M.C. has been in the care and custody of the Agency since October 6, 1998. He has been living with his current foster parents since May 2000. M.C. has a deep and loving relationship with his foster family. His foster parents desire to adopt M.C. and M.C. wants very much to permanently be a part of their family.

This case had taken an unusual turn because, at a previous termination proceeding, the Honorable Clinton W. Smith granted a Decree Nisi terminating the parental rights of Mother to M.C. in 1999. The Decree was made final on December 28, 1999, and Mother filed a timely appeal. On December 11, 2000 the Pennsylvania Superior Court reversed Judge Smith's termination of Mother's parental rights and reinstated Mother's parental rights in a Memorandum Opinion.<sup>1</sup> The Agency filed a petition for allowance of appeal from the Superior Court decision, but the Pennsylvania Supreme Court denied the petition.

Mother remained incarcerated in a state correctional institution until June 18, 2001. She was then held in a

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<sup>1</sup>The Superior Court panel overturned Judge Smith's decision to terminate parental rights, because they were not satisfied that the evidence presented to Judge Smith proved that the conditions which led to the M.C.'s removal or placement continued to exist, and that Mother could or would not remedy the conditions which led to the removal or placement within a

county facility until her final release in November 2001.<sup>2</sup>

On or about July 7, 2001, a permanency hearing was held before a Lycoming County Family Court Master and the previous adjudication of dependency of M.C. was reaffirmed. On August 24, 2001, a hearing was held before Judge Smith to determine visitation. The visitation was scheduled to begin on August 31, 2001 for two (2) hours per week for a time period of two (2) months. Thereafter, the visits would be scheduled for a four (4) hour period on a weekly basis for approximately two (2) months. Prior to this visitation schedule, Mother had not had any physical contact with M.C. since October 1998.

The focal point of the termination hearing held before this Court on April 7-8, 2003 centered on the time

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reasonable period of time.

<sup>2</sup> At the time of the termination hearing before Judge Smith, Mother was an inmate in a State Correctional Institution. Mother has had an historical problem with abuse of cocaine. As part of her prison sentence, she was admitted to Sojourner House, an inpatient drug treatment facility. This program allowed her son to reside with her, so M.C. was removed from foster care and placed with Mother in April 1998. However, in October 1998, Mother was discharged from Sojourner House due to negative behavior and noncompliance with the program's guidelines. Her release was not due to any drug related problem. Mother was then returned to state prison and M.C. returned to foster care.

The Court also notes the Agency caseworker testified in the termination hearing before this Court on April 7, 2003 about some of the early history of Mother. Mother became known to the Department Of Human Services in Philadelphia on September 20, 1988 before M.C. was born. Mother had an addiction to cocaine. There was a report of no food in the house and there was a concern of Mother's children starving. M.C. was born February 1994. Mother was homeless shortly thereafter. Mother went into a treatment program in February 1994, but she left the program in March 1994. The case was referred to the Agency on April 30, 1997. M.C. was three (3) years old at the time. The basic concerns about Mother at the time were drug abuse, unstable home environment and failure to complete court ordered services. If the reader wants to review the early history of Mother, please read Judge Clinton Smith's Opinion and Order to this case number dated December

frame after Mother was released from incarceration and was able to begin having contact with M.C. in the summer and fall of 2001. Glen Criswald was the Agency caseworker assigned to Mother when she was released from county incarceration on November 21, 2001. Mr. Griswald went over the Family Service Plan with her and told her what she needed to do to obtain custody of M.C., including maintaining a home and employment and cooperating with counseling. While on the work release program in Lycoming County Mother worked at Montgomery Sportswear.

Upon leaving prison in November 2001, Mother obtained an apartment at 1248 West Fourth Street. Initially, things seemed to be going well. On January 15, 2002, a permanency hearing was held before this Court. See Agency Exhibit 6, January 15, 2002 Permanency Hearing order. At this time, the Court reaffirmed the dependency of M.C. and affirmed the goal of reunification. Mother was cooperating with the Agency at this time and the Court increased her visitation to a four (4) hour visitation period every week with two (2) of the hours being unsupervised. The Court noted that M.C. was doing very well in the foster home and he was doing well in the second grade of school. The Court also noted that the change of goal from adoption to reunification was causing stress for M.C. that resulted in some problems in school and

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7, 1999, wherein Judge Smith terminate Mother's parental rights.

in the foster home. The Court indicated Dr. Richard Dowell, a neuropsychologist, would review the stress the child was feeling.

Mr. Griswald supervised the ensuing visits of Mother with M.C. Mr. Griswald seemed to have a good relationship with Mother. He personally helped her move her things when she moved to a new residence.

On March 15, 2002, Mother began her four (4) hour unsupervised visits with M.C. Initially, these visits seemed to go well. On March 29, 2002, Mr. Griswald transported Mother to Shamokin High School, where M.C. was participating in a regional wrestling tournament.

In April 2002, Mr. Griswald talked to Mother about going to watch M.C. participate in a wrestling tournament in Maryland. Mother was told that the Agency would pay Mother for mileage if she obtained a ride to the tournament. However, Mother claimed she could not find transportation.

On April 26, 2002, Mr. Griswald offered to extend Mother's visits to eight (8) hours unsupervised. Oddly enough, Mother did not want to do this unless she could have overnight visits. Despite Mother's refusal of unsupervised, daytime eight-hour visits, Mr. Griswald arranged for such visits to occur every Sunday from 10:00 a.m. until 6:00 p.m., beginning on May 5.

On May 5, 2002, Mother called Mr. Griswald and told him she obtained part-time employment in addition to her employment with Montgomery Sportswear.

On May 10, 2002, Mother told Mr. Griswald that she had quit the part-time job, because it made her too tired. Mr. Griswald then discussed the unsupervised visits of Mother with M.C., explaining that she could not have third parties present for the visits unless these persons were approved by the Agency.

On May 19, 2002, M.C. had another unsupervised Sunday visit with Mother. Around this time, the foster mother reported that M.C. began to cry uncontrollably at school and he was reluctant to come to the visits with Mother.

On May 26, the next Sunday visit, when Mr. Griswald came to Mother's apartment to pickup M.C. at 6:00 p.m., he noticed an unknown man in the apartment. Mother also revealed to him that she was fired from her job at Montgomery Sportswear. Mother complained that she did not like the way her supervisor treated her. Mr. Griswald followed up on this information and, on May 30, 2002, he learned that Montgomery Sportswear fired Mother for not showing up for work. About this time, Mr. Griswald also learned that Mother was discharged from the Career Links Program that she had been attending.

On May 31, 2002, the foster mother called Mr. Griswald and reported that M.C. claimed that there was a male sleeping in Mother's bedroom during the last visit. Mr. Griswald set up a June 4, 2002 appointment to discuss this with Mother, but she cancelled the appointment stating that she was too tired to walk over to his office. On June 5, 2002, Mother again failed to appear for a 9:30 a.m. appointment. He called Mother and she told him she had not heard her alarm clock. Mother appeared in Mr. Griswald's office later that day at around noon. She was agitated and told him she had things to do. When Mr. Griswald inquired concerning the male in her home, Mother basically told him it was none of his business and she was leaving his office. Mr. Griswald warned her he would cancel the June 9, 2002 visit unless Mother clarified the situation. Mother stormed out of the office threatening to sue Mr. Griswald.

Mother did not contact Mr. Griswald and the June 9 visit did not take place. On June 14, 2002, Kay Carpenter, an Agency caseworker talked to Mother on the telephone. When Mother was told she would have to resume supervised visits given the circumstances, Mother refused to participate in visits with M.C.

On June 26, 2002, a permanency hearing occurred before this Court. The Court reaffirmed dependency of M.C.

and continued his placement in foster care. In the Court's Order, it stated that Mother should participate in Family Counseling with Dr. Richard Dowell or another counselor agreed upon by the parties. The Court found Mother had made some reasonable progress and maintained the goal of reunification of Mother with M.C. The Court commended her for her cooperation with the foster parents and noted she seemed interested and concerned about the welfare of M.C. The Court stated Mother should continue her efforts in obtaining employment and to cooperate with the Career Links Program.

In the Order dated June 26, 2002, the Court restricted visitation to one contact per week for three (3) weeks under supervision by the Agency at its office. The Court directed the Agency, during this three (3) week period, to investigate Mother's home and the people living there. The Court noted that if no adverse information developed in this investigation, Mother could resume unsupervised contact with M.C. in her home for six (6) hour periods. The Court noted that if these visits went well for two months, they would be extended to eight (8) hour unsupervised visits in the home. The Court also indicated it would consider overnight visits at the next permanency review hearing. In addition, the Court required Mother to fully cooperate with a drug and alcohol assessment. The Court noted that Mother claimed to be clean



from cocaine for five years, but the Court wanted the evaluation to confirm Mother was not using drugs again. The Court was very encouraging to Mother and set forth a road map for Mother to gain overnight visitation with M.C.

Mother did not comply with or respond to the encouragement offered by the Court on June 26, 2002. On July 3, 2002, Mother appeared for a scheduled visit with M.C., but she then cancelled the visit complaining of back pain.

Mother arranged for Mr. Griswald to meet with two individuals who were tenants in her home. The two individuals told Mr. Griswald they were from Philadelphia and that they were living off an inheritance. They denied they had criminal records.

Mr. Griswald talked with Mother about the drug evaluation required by the Court. On July 9, Mr. Griswald called Mother to arrange a drug-screening test. She refused, claiming she was too busy. However, she asserted she had set up a drug assessment with West Branch Drug and Alcohol for July 11, 2002.

On July 11, 2002 Mother failed to appear for a scheduled visit with M.C. She failed to call before the visit, despite M.C. being transported several hours to attend the visit. Mr. Griswald also scheduled an appointment with Dr. Dowell for August 8, 2002, because Mother cancelled the

prior appointment with him in May. Mr. Griswald also learned that one of the individuals residing in Mother's home was on criminal probation and he was supposed be living in Philadelphia, not Williamsport.

On July 12, 2002, Mr. Griswald wrote a letter to Mother informing her he would suspend her visits with M.C. until the problems could be addressed at a future conference to be held in Court on July 24, 2002.

On July 17, 2002, Mr. Griswald left a card at Mother's home asking her to contact him. As a result, Mother telephoned him, but unable to give him a reason why she did not appear for the July 11 visit. She also acknowledged she failed to appear for the drug evaluation at West Branch on July 11, 2002. It was rescheduled for July 12, but she failed to appear again.

On July 19, 2002, Mother telephoned Mr. Griswald and complained that he was getting one of her tenants, Mr. Charles Thompson, in trouble with the Probation office. When he asked Mother about submitting to a drug-screening test, Mother refused stating she was too busy.

A conference was held before this Court on July 24, 2002 with all parties present. See Agency Exhibit 7, second document. After receiving evidence of Mother's lack of cooperation with the Agency and her failure to comply with

prior court Orders, the Court suspended unsupervised visitation with M.C. The Court permitted Mother to have supervised visitation once every two (2) weeks, beginning after August 8, 2002 when Mother was to appear for an evaluation with Dr. Richard Dowell. The Court also required Mother to submit to at least one urine test before visitation resumed and to "fully cooperate" in random urinalysis testing. The Court stated if supervised visitation went well it would increase the time from four (4) to six (6) hours. The Court also permitted Mother telephone contact with M.C. once per week. As an incentive to Mother, the Court stated it would make a change in its Order in accordance with her progress.

At the end of the July 24, 2002 conference/hearing, the Court asked Mother to submit to a urinalysis test after she left the courtroom. Mother refused this request from the Court, claiming she was too busy. The Court noted this in the July 24, 2002 Order and stated: "The Court deems that as being a lack of cooperation and raises suspicions that she may have used a controlled substance."

Unfortunately, the Court Order of July 24, 2002 did not result in meaningful cooperation by Mother. Mother did not appear for her session with Dr. Dowell scheduled for August 8, 2002.<sup>3</sup> On July 30, 2002 the foster mother initiated a phone call to Mother in an effort to have Mother maintain

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<sup>3</sup> Mother eventually did complete the evaluation with Dr. Dowell on October

contact with M.C. The initial part of M.C.'s phone conversation with Mother seemed to go well. However, at one point Mother told M.C. he would come to live with her. M.C. told her he did not want to live with her. Mother became angry and said she would smack M.C. for disrespecting her. M.C. became upset and the foster mother, who was listening in on the conversation on a phone extension, ended the telephone call.

Mother has had no contact with M.C. since the July 30 phone call. To this day, she has not submitted to any urinalysis testing. She has not undergone a drug and alcohol evaluation with West Branch Drug and Alcohol or any equivalent agency.

On July 30, 2002, Mr. Griswald made contact with Mother and Mother, who had again moved, refused to provide him a forwarding address. Mr. Griswald reiterated to Mother that she would need to submit to a urine test, undergo a drug evaluation with West Branch, and complete an evaluation with Dr. Dowell to resume her visitation with M.C.

On or about August 20, 2002, Mother talked with Kay Carpenter from the Agency. Ms. Carpenter is Mr. Griswald's supervision. Mother wanted help from the Agency in obtaining public housing and she indicated that if the Agency confirmed she was visiting with M.C. she could obtain a bedroom for him.

Mother also asked for carfare to attend an appointment with Dr. Dowell. Mother told Ms. Carpenter she had no housing. Ms. Carpenter again reiterated the three (3) things Mother would need to do (i.e., urine testing, drug evaluation, and completion of the evaluation by Dr. Dowell) to begin visitation with M.C. Ms. Carpenter also asked Mother to come to the office to submit to a urinalysis test, but Mother said she had something else to do. Mother told Ms. Carpenter to send any letters from the Agency to her old address.

Ms. Carpenter sent a letter to Mother's old address, which was returned on September 12, 2002, with an address notation of 828 Memorial Avenue. Ms. Carpenter then decided to make a home visit to this address to see if Mother was residing there. Mother answered the door at this address, but she refused to let Ms. Carpenter inside. Later on that day, Mother came to the Agency office and spoke with Ms. Carpenter and Richard Saylor, Director of the Agency. Mother again refused to provide a current address. Once again, the Agency staff explained to Mother what she needed to do to resume visitation with M.C. The final contact Ms. Carpenter had with Mother occurred on April 4, 2003. Ms. Carpenter was attempting to serve Mother with notice of the termination hearing dates of April 7-8, 2003. Upon contacting her, Mother threatened to file harassment charges against Ms. Carpenter

for coming to her home.

The next permanency hearing occurred on November 12, 2002. The Court heard significant testimony on this date. Dr. Richard Dowell testified. Dr. Dowell had seen M.C. eight (8) times. He opined that M.C. was suffering from posttraumatic stress disorder. He noted the importance of M.C. living in a stable and predictable home environment. The last time Dr. Dowell saw M.C. was on August 20, 2002. M.C. told the doctor he wanted to stay with his foster family and he felt it would be easier if he did not visit with Mother. He also indicated he felt some fear in going to visits with Mother. The doctor observed that M.C. felt safe and secure with the foster family. The doctor noted that when M.C. visited with Mother his distress would grow, which would lead to crying and decreased attention at school. He also tended to over-eat when visits occurred, because of his lack of feeling safe and secure with Mother.

Dr. Dowell also commented on the emotional bond, or lack thereof, between Mother and M.C. When he asked M.C. who his Mother was, M.C. responded with his foster mother's name. Dr. Dowell referred to his relationship with Mother as being more of a stranger relationship. M.C. referred to Mother as a nice person, but indicated no depth of relationship. Dr. Dowell testified that M.C. "blossomed" in the foster home,

because it is predictable, safe and structural. Dr. Dowell further stated that if visits resumed again with Mother, M.C. might regress, because his distress level would go up. Therefore, Dr. Dowell felt that the best interest of M.C. was consistent with him staying in the foster home and that visitation with Mother remain suspended.

Dr. Dowell completed an evaluation of Mother on October 11, 2002. Her personality testing was elevated on narcissism and anti-social scales. Her alcohol and drug scales were consistent with recreational usage. Dr. Dowell noted that the tests regarding drugs and alcohol did not seem to match her history and this indicated she might not have been candid in answering the test questions. Finally, since it may have been presented in a way to manipulate the data, Mother's parent-child relations testing did not reveal a valid profile, although the result was not uncommon for an individual in a court setting.

Dr. Dowell noted Mother's attitude regarding M.C. being in foster care included anger and the feeling that the establishment was trying to take her child from her. When he asked about Mother's parenting ability, Dr. Dowell indicated that the best indication of her future behavior was her past behavior. Dr. Dowell had first seen Mother in August 2001 and again in October 2002. He did not see any significant changes

in Mother over this time period.

Because of the length of the permanency hearing on November 12, the Court continued that hearing until January 2, 2003 to hear additional testimony. On January 2, 2003, the Court heard testimony from Scott Erb of the Lycoming County Adult Probation Office concerning Charles Thomson, Jr., who he was supervising on his criminal caseload. Mr. Erb went to Mother's home on July 18, 2002 to see if Mr. Thomson was there. Mother told Mr. Erb that Mr. Thomson was not there at the time, but she stated that he resided there. Mother then called the next day and told Mr. Erb that Mr. Thomson did not reside there, but only stayed there when he came to Williamsport from Philadelphia. Mr. Thomson is currently incarcerated on attempted homicide charges.

The foster mother also testified. She resides in Lackawanna County with M.C. and her three (3) children. She confirmed she is a pre-adoptive parent. She noted when she obtained custody of M.C., then age six, in May 2000, he was very stressed and angry. He engaged in over-eating, had sleeping problems and was developmentally acting like a four (4) year old. At that time Mother's parental rights had been terminated, but the case was on appeal to the Pennsylvania Superior Court. M.C. did very well up to the time of the Superior Court's reversal of the termination of parental



rights. However, after the reversal of Judge Smith's decision and the beginning of visitation with Mother, she saw significant changes in M.C. By the time his visits with Mother became unsupervised, M.C. began to become a problem in school. His grades dropped and he went back to over-eating. He did not want to go to the visits and seemed angry after visits. There were also problems with bed-wetting.

The foster mother also recounted the phone conversation of Mother and M.C. on July 30, 2002, Mother's last contact with M.C. In the conversation M.C. referred to his foster mother as mom. Mother corrected him and told him he would return to her home. M.C. then became very upset with the conversation. The Agency informed the foster mother after July 30, 2002 that Mother could exercise her right to phone M.C., but Mother has not called since July 30. Since suspension of visitation, M.C., now in third grade, is doing very well. He is eating and sleeping normally. He does not talk about Mother at all. M.C. is also active in wrestling and basketball. M.C. tells his foster mother he wants to stay in their home. Mother did not send M.C. a Christmas card or present for Christmas 2002.

Mother also testified at the permanency hearing on January 2, 2003. She noted M.C. is her seventh (7<sup>th</sup>) child and she acknowledged she has had no contact with M.C. for six (6)

months. She testified she bought M.C. Christmas gifts for 2002, but would give them to him when she commences visitation again. She admitted she understood the Court's requirements for beginning visitation with M.C. She acknowledged being evicted from housing in July 2002. She explained her last phone conversation with M.C. on July 30, 2002, by claiming M.C. was disrespectful and that is why she has not called since. She acknowledged telling the Agency caseworker not to come to the home she has been staying in since July 2002, because the home was shared with other people. She testified she is working at Keystone Staffing from 6:00 a.m. until 2:00 p.m., five (5) days a week. When questioned by the Guardian Ad Litem, Matthew Golden, Esquire, Mother claimed she could not submit to a drug test after the completion of the hearing.

Upon completing the permanency hearing on January 2, 2003, the Court reaffirmed the dependency of M.C. The Court noted Mother had made no significant progress and was still at the early stages of trying to put her own life together. The Court also noted she has not cooperated with drug testing and, therefore, the Court was not confident that she was not using controlled substances. Mother also has not complied with the prior Court Orders. In light of the circumstances, the Court suspended any further visitation contact with M.C. and stated the Agency could proceed to file a petition for termination.

See Agency Exhibit 9, the Court Order of January 2, 2003. The Agency then filed a Petition for Termination of Mother's parental rights of M.C. on January 10, 2003.

The Court held hearings on the Agency's Petition for Termination on April 7 and 8, 2003. Mother only appeared for a portion of these hearings. Mother was present for the morning session of court on April 7, 2003; however, when the Court commenced its afternoon session at 1:30 p.m., Mother did not appear. Mother returned to Court some time between 2:30 and 3:00 p.m. When the hearing reconvened at 9:00 a.m. on April 8, 2003, Mother failed to appear. Thus, she offered no testimony. When the Court completed the hearing on April 8, 2003 and made its findings granting The Agency's Petition, Mother was not present.

#### **CONCLUSIONS OF LAW**

1. The Agency has shown by clear and convincing evidence that the parental rights of Mother to M.C. should be terminated based on 23 Pa.C.S.A. §2511(a)(1), (5) and (8).

2. The Agency has shown by clear and convincing evidence that termination of parental rights of Mother is in the best interest of M.C.

#### **DISCUSSION**

Termination of parental rights is an issue of constitutional dimensions because of the fundamental right of

an individual to raise his or her own child. However, as the Pennsylvania Superior Court has stated, "A parent's basic constitutional right to custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, health safe environment." In re: J.A.S., Jr., 820 A.2d 774 (Pa.Super. 2003), citing In the Interest of Lilley, 719 A.2d 327 (Pa.Super. 1998).

The statute permitting involuntary termination of parental rights in Pennsylvania, 23 Pa.C.S.A §2511, sets forth certain irreducible minimum requirements of care that parents must provide for their children. Parents who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and may properly have his or her rights terminated. In re: J.T. and R.T., 817 A.2d 505 (Pa.Super. 2002).

#### **GROUND'S FOR TERMINATION**

The Agency sought termination under 23 Pa.C.S.A. §§ 2511 (a)(1), (5) and (8). The Court is satisfied that the evidence is clear and convincingly supports termination of parental rights under each of these subparagraphs.

#### **Section 2511(a)(1)**

Section 2511(a)(1) permits termination of a parent's

rights to a child when:

The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

23 Pa.C.S.A. §2511(a)(1). The Court believes the Agency met its burden of proving this ground for termination. The Agency filed its Petition for Termination on January 10, 2003. Mother's last visit with M.C. occurred on or about July 3, 2002. Mother ended up walking out of the visit complaining of back pain. She failed to show up for the next scheduled visit. She did not contact the Agency to inform them she would not appear and M.C. was transported from Lackawanna County to Lycoming County for the visit, only to learn Mother would not appear. The testimony from the foster mother clearly indicated M.C. was very angry when Mother failed to appear. Mother has not seen, written or telephoned M.C. since July 3, 2002.<sup>4</sup> Certainly, an individual's parental duties include taking the initiative to maintain contact with your child. Mother has failed or refused to do so for a period of at least six months. Therefore, termination was appropriate under 23 Pa.C.S.A. §2511(a)(1).<sup>5</sup>

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4 Although Mother spoke to M.C. by telephone on July 30, 2002, M.C.'s foster mother initiated the phone call. During this phone call, Mother yelled at M.C. and threatened to smack him. M.C. became so upset that his foster mother terminated the call. Mother has not attempted to have any contact with M.C. since.

5 Assuming, arguendo, that the telephone contact initiated by foster mother would be enough to toll the running of the six month period, the Court believes termination was appropriate under subsections (5) and (8).

**SECTION 2511(a)(5)**

Section §2511(a)(5) states:

The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

23 Pa.C.S.A. §2511(a)(5). The Court found the evidence presented by the Agency supported termination under this subsection. M.C. was removed from Mother's care and custody on October 6, 1998. From October 1998 through November 2001, Mother did not have custody due to the prior termination proceedings and Mother's incarceration. Although efforts were undertaken to reunify Mother and M.C. after Mother was released from prison in November 2001, Mother never got beyond the visitation stage, because she failed or refused to cooperate with the Agency and to comply with the Court's orders.

It also appears that the conditions that led to the removal of M.C. continue to exist and that the parent will not or cannot remedy the conditions within a reasonable period of time. The evidence shows mother has lost her housing and her employment is sporadic. She does not seem able or willing to cooperate with the Agency caseworkers in remedying the problems preventing reunification with M.C. She will not undergo a drug evaluation, and she will not permit random drug testing. Although the Court has no way of knowing for sure whether she has resumed using cocaine, her repeated refusals and avoidance of drug screening, even when this is a condition of seeing her child, points toward a very real possibility of drug abuse.

The evidence also shows that the services or assistance reasonably available to Mother are not likely to remedy the conditions or problems which led to placement within a reasonable period of time. Once again, it is clear Mother will not cooperate with counseling or services offered by the Agency. Nothing in the evidence points toward her behavior changing in the foreseeable future. In fact, she will not even tell the Agency where she is living.

**Section 2511(a)(8)**

Section 2511(a)(8) allows termination of a parent's rights when:

The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

All the Court's prior discussions certainly apply to this subsection. Obviously, more than 12 months have elapsed from the date of placement in October 1998. Similarly, more than 12 months have elapsed since Mother's release from incarceration in November 2001. As discussed previously, the conditions, which led to the removal or placement, continue to exist and termination of parental rights would best serve the needs and welfare of the child.

#### **Needs and Welfare of the Child**

Section 2511(b) requires the Court to give primary consideration to the developmental, physical and emotional needs and welfare of the child. 23 Pa.C.S.A. §2511(b). The evidence presented shows that M.C. desperately wants to be adopted by the foster parents. He identifies with the foster parents as his mother and father. He is bonded with the foster parents and their children. He has no real bond with Mother and, in fact, has some fear when he visits with her.

Ms. Schramm, the adoption caseworker from the St. Joseph's Center that actually placed M.C. in the foster home



in Lackawanna County, testified at the termination hearings. Ms. Schramm became involved with M.C. in October 2000. She visits the foster home monthly. She noted M.C.'s improvement in school since Mother's visits were suspended. She describes M.C. as being extremely close with the foster parents. Also, he is particularly close to the their young son, Cooper, age six (6). She describes the foster parents as very nurturing. She strongly recommends this adoption.

Dr. Dowell also testified concerning M.C.'s need for a predictable and stable environment and his lack of bond with Mother.

It is clear that the only way M.C.'s needs and welfare can be furthered is by allowing this adoption to proceed as soon as possible.

Accordingly, for all the reasons contained in this Opinion, the Court believes termination of parental rights is the only decision that can be made in this case.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Kenneth D. Brown, Judge